Malaysian Airlines System Employees' Union v Sistem Penerbangan Malaysia Berhad and Another

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO R1–25–114 OF 2001

RAUS J

4 MARCH 2004

Administrative Law — Remedies — Certiorari — Industrial Court — Application to quash decision — Whether to be granted — Whether there were errors of law

The union applied to this court for a certiorari to quash the decision of the Industrial Court that found no merits in the Union's claims that the workers in question were entitled to retrenchment pay and indemnity, termination benefits and indemnity, and secondment allowance after a company re-structuring exercise.

Held, dismissing the application:

(1) The chairman's finding of facts, that the 438 workers were never terminated but continued to be in the employment of MAS at the date of hearing at the Industrial Court, was well supported by evidence (see para 13).

(2) The union had failed to show that the chairman of the Industrial Court had committed any errors or that he had misconstrued the terms of the relevant statute or misapplied a principle of the general law (see para 14).

[Bahasa Malaysia summary

Pihak kesatuan telah memohon untuk perintah certiorari bagi membatalkan keputusan Mahkamah Perusahaan yang menyatakan bahawa tiada merit dalam tuntutan kesatuan bahawa pekerja-pekerja yang berkenaan berhak kepada pembayaran penghematan dan indemniti, faedah pembuangan kerja dan indemniti, dan elaun peminjaman selepas pembentukan semula syarikat.

Diputuskan, menolak permohonan tersebut:

(1) Penemuan fakta oleh pengerusi mahkamah, bahawa 438 pekerja tidak diberhentikan kerja tetapi masih berada di bawah MAS pada tarikh perbicaraan di Mahkamah Perusahaan, disokong oleh keterangan (lihat perenggan 13).

(2) Pihak kesatuan gagal untuk membuktikan bahawa pengerusi Mahkamah Perusahaan telah terkhilaf atau telah tersalah tafsir perundangan berkenaan atau tersilap dalam menggunakan prinsip undang-undang am (lihat perenggan 14).]

Notes

For cases on certiorari, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 185–393

Cases referred to

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417 (refd)
Quah Swee Khoon v Sime Darby Bhd [2002] 2 MLJ 600 (refd)

Legislation referred to

Employment (Termination and Lay-off Benefits) Regulations 1980
Industrial Relations Act 1967 s 26(2)

K Paramanathan (P Shyamala with him) (Rozaini, Paramanathan & Assoc) for the applicant
A Ramadas (R Usha Devi with him) (Ramadass & Assoc) for the respondent

Raus J:

INTRODUCTION

[1] There are two applications for an order of certiorari arising from the Industrial Court Award No 716 of 2001 dated 13 September 2001. In R1–25–115–2001, the applicant is Malaysian Airlines Berhad ('MAS') and in R1–25–114–2001, the applicant is Malaysian Airlines System Employees Union ('the Union').

[2] The Industrial Court in the said award, found that there was no merit in the claims by the Union for (i) retrenchment pay and indemnity *in lieu* of notice under art 3 of the collective agreement; (ii) termination benefits and indemnity *in lie*u of notice under the Employment Act 1955; and (iii) secondment allowance. However, the learned chairman after holding as such, went on to award compensation of RM2,000 per worker to each and every one of the 438 workers.

[3] In R1–25–115–2001, MAS sought to quash the award of compensation of RM2,000 per worker awarded to each of the 438 workers. In R1–25–114–2001, the union sought to quash the findings of the learned chairman in holding that there was no merit in the claims by the Union that the workers are entitled to retrenchment pay and indemnity, termination benefits and indemnity and secondment allowance.

[4] At the hearing of both applications on 6 August 2003, the learned counsel for the union conceded that the Industrial Court had no jurisdiction to make the compensation award of RM2,000 per worker to each of the 438 workers and agreed to have that part of the Award to be quashed on the grounds relied upon by MAS in that application. Accordingly, this court granted order in terms of the application in R1–25–115–2001.

[5] Thus, the application before me is only in relation to R1–25–114–2001 that is the application by the Union.

FACTS

[6] The facts agreed by the parties before the Industrial Court are as follows:

(a) The parties to the dispute are Malaysian Airlines System Employees (the Union) and Malaysian Airlines System Bhd (MAS).

(b) The issue before the court is the Minister of Human Resources' reference to the Industrial Court under s 26(2) of the Industrial Relations Act 1967. The dispute identified in the minister's reference is *"Penggajian Seramai 525 Orang kakitangan MAS di MAS Catering Sdn Bhd"*

(c) Dispute before the court now is confined to 438 employees, as set out in pp 1 to 9 of the union's bundle of documents.

(d) The claims by the union as per para 23 of the amended statement of case are as follows:

(i) Retrenchment pay and indemnity *in lieu* of notice as per art (3) Jadual Kedua dalam Perjanjian Bersama; or

(ii) Termination benefits and indemnity *in lieu* of notice under the Employment Act 1955; or

(iii) Secondment allowance.

(e) The employees concerned were working in the catering services department of MAS, some of them have had been there since 1971.

(f) MAS decided that subsidiary companies to be formed to take over its various departments, including the catering services department.

(e) MAS Catering Services Sdn Bhd (MCSB) was formed to take over the catering services department.

(f) Employees of MAS continued to work at MCSB although MAS continued to pay their salaries.

(i) On 15 January 1996, MCSB sent offer of employment to the employees at the catering services department of MAS — p 13 of bundle of document.

(j) The 438 employees amongst others did not accept the offer of continuous employment by MCSB.

(k) MAS wrote to all employees who accepted the offer of employment; a letter dated 30 January 1996 informing that the company was willing to release them to work for MCSB.

(l) There was no dispute between the employees who accepted the offer of employment by MCSB and MAS.

(m) Employees of MAS who did not respond to the offer of employment by MCSB continued to be in the employment of MAS although they were working at MCSB. They continued to be on the payroll of MAS from 1 February 1996.

FINDINGS

[7] As to the issue whether the 438 employees were terminated by MAS, the learned chairman at para 4 of his award stated as follows:

> During cross-examination, CLW1 stated that the 438 employees were given the option to join MCSB or remain with MAS. Those who did not accept the offer from MCSB were not terminated or retrenched by MAS. CLW1 also stated that there is no provision in the collection agreement CLE5 or the subsequent one signed in 1996 pertaining to secondment allowance.

[8] The learned chairman then stated as at para 9 of the award that:

> … Be that as it may, the real issue at hand is whether the 438 workers are in the first place entitled to retrenchment benefits and this would only be so if they had been terminated on the ground of redundancy.

[9] The learned chairman came to a conclusion that as there was no termination by MAS, the 438 employees were not entitled to retrenchment benefits under the collective agreement. In relation to the claim for termination benefits, the learned chairman came to a similar conclusion that as the 438 workers represented by the union were never terminated and therefore, the claim for termination benefits under the Employment (Termination and Lay-off Benefits) Regulations 1980 should be dismissed. The learned chairman also came to a conclusion that the 438 workers were not entitled to indemnity *in lieu* of notice. Finally, the learned chairman found that as the collective agreement did not contain any provision on secondment allowance, there was no basis for the 438 workers to be entitled to any secondment allowance.

[10] I am in agreement with the above findings of the Industrial Court. I have no reasons to disturb such findings, bearing in mind that this is a judicial review, and thus, I should not be exercising an appellate function.

[11] In *Quah Swee Khoon v Sime Darby Bhd* [2002] 2 MLJ 600, the Court of Appeal held that:

> It is not open for a court in judicial proceedings to exercise appellate powers. If a judge to who an application is made for *certiorari* inquires into and disturbs finding of facts based on the credibility of witnesses, he is actually exercising appellate function.

[12] In *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417, the Supreme Court held that:

> The Industrial Court in this case had heard evidence from both sides and it came to a decision exculpating Tan Seng Khow. It is not the function of the High Court in exercise of its supervisory function to hear a dispute *de novo* and decide it on its merits. This is not a case where the Industrial Court had acted on no evidence or had not come to a conclusion which on the evidence it could not reasonably come to.

[13] Similarly, in the instant case, it is not a case where the Industrial Court had acted on no evidence. The learned chairman's finding of facts, that the 438 workers were never terminated but continued to be in the employment of MAS at the date of hearing at the Industrial Court, is well supported by evidence.

A CONCLUSION

[14] This court comes to the conclusion that there are no grounds to quash that part of the award sought by the union and to remit the case to the Industrial Court for a different chairman to re-hear the matter. To me, the union had failed to show that the learned chairman of the Industrial
B Court had committed any errors or that he had misconstrued the terms of the relevant statute or misapplied or misstated a principle of the general law. Accordingly the application by the applicant in R1–25–114–2001 ('the Union') is hereby dismissed with costs.

Union's application dismissed with costs.

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Reported by M Maheswaran

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